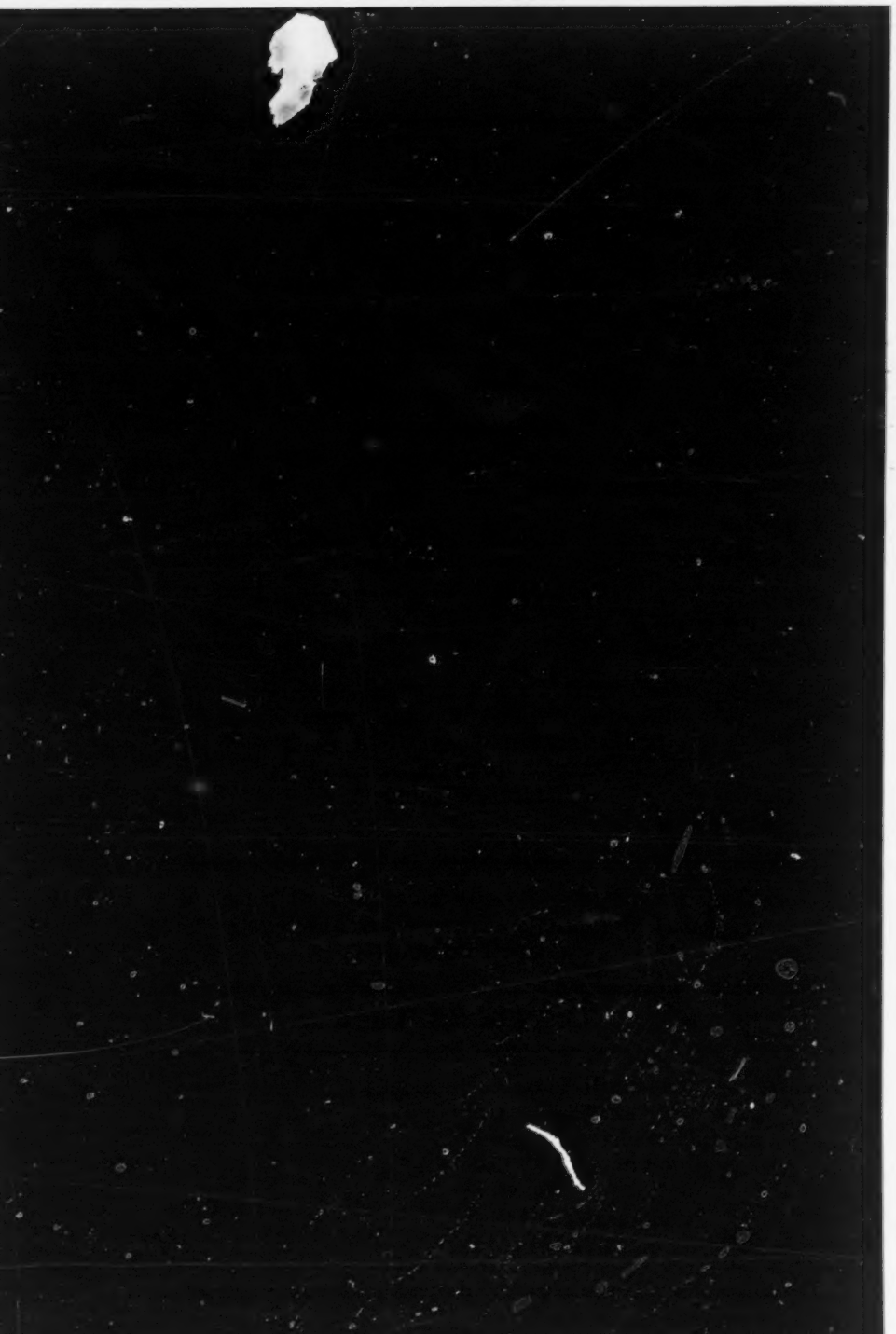

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In The

Supreme Court of The United States

October Term, 1974

No. 74-456

Hon. John Hill, Attorney General of the State of Texas, Hon. Mark White, Secretary of State of the State of Texas, and Hon. Carol S. Vance, District Attorney for Harris County, Texas,

Appellants,

vs.

Printing Industries of the Gulf Coast, Marion Coleman, Grady Fitch and Charles Drake, Individually, and on behalf of all persons similarly situated,

Appellees

BRIEF FOR APPELLEE

To the Honorable Justices of the United States Supreme Court:

The most serious dangers to constitutional liberties come not from evil-minded rulers whose malevolent motives and tyrannical actions are all too obvious, but from beneficient, well-meaning individuals who, in their zeal to achieve socially desirable ends, allow subtle but insidious encroachments upon precious freedoms, often in a manner appearing relatively unobstrusive or insubstantial, but oblivious to the inevitable cataclysm born of the continued gradual erosion of fundamental rights. That basic principle is what this case (indeed, all cases regarding First Amendment

limitations on governmental action) is all about — the ominous threat to our Bill of Rights posed by a superficially inocuous State statute conceived by men of the highest motives, but facially incompatible with the dictates of the First Amendment.

HISTORY OF THE CASE

In 1973, the 63rd Legislature of the State of Texas enacted House Bill No. 4, amending Article 14.10(b) of the Texas Election Code to provide as follows:

> "Any printed or published political advertising shall also have printed on it the name and address of the printer or publisher and the person paying for the advertising."

The amendment became effective on June 14, 1973, and provided sanctions for its violation by fine of not less than $100 nor more than $5,000 or imprisonment not less than one year nor more than 5 years or both such fine and imprisonment.

On September 11, 1973, less than three months after the new law had become effective, and before any major elections to which it would apply, the Appellees herein filed suit in the Southern District of Texas alleging that the above quoted provision of Article 14.10(b) as amended is unconstitutional and void on its face because of its interference with the Appellees' rights to political and associational privacy and anonymity (as established by *Talley* v. *California*, 1960, 362 U.S. 60, 80 S.Ct. 536, 4 L.Ed.2d 559; and *NAACP* v. *Alabama*, 1958, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488); because of its abridgment of freedom of the press (cf. *Miami Herald Publishing Co.* v. *Tornillo*, 1974 U.S. , 94 S.Ct. 2831); and because of its vagueness and imprecision. The Appellees alleged under oath and subsequently presented uncontradicted testimony to substantiate that they had reason to fear and did fear that they would suffer intimidation, harassment

and reprisals if they were required to associate themselves openly and publicly with particular political candidates or positions in the manner required by the statute, that the statute possesses an inherent and substantial danger that persons seeing the Appellees' names on political advertising would mistakedly believe that the Appellees were thereby endorsing that candidate or political position, and that the statute had an unconstitutional and irreparable "chilling effect" on the exercise of First Amendment rights. In addition, the Appellees alleged that they were unable to determine the exact requirements of the penal statute because the term "person paying for the advertising" is not defined and, therefore, the Appellees were unable to ascertain whether such term refers to advertising agencies, individual advertising agents, political committees, their chairmen, political donors, political candidates, or some other individual or entity.[1]

On September 18, 1973, a hearing was held at which Plaintiffs Marion Coleman and Charles Drake testified concerning the effects of Article 14.10(b), as amended, and the facts alleged in the Plaintiffs' Original Petition concerning intimidation, harassment and reprisals of printers when required to identify themselves openly on the face of political advertising. Plaintiff Coleman testified that she was a printer who had been engaged in political activities for a number of years and had experienced specific episodes constituting harassment and intimidation as a result of her having been publicly identified as a supporter of the Republican Party. As a result of the various incidents which she described relating to her public activities on behalf of the Republican Party in the 1960, 1964 and 1968 presidential campaigns, including one episode in which she

[1] The Plaintiffs alleged that they are also unable to determine what constitutes a "publisher" under the statute and particularly whether an advertising agency constitutes a "publisher". Apparently, the industry concept of a "publisher", the lay impression of what such term encompasses, and the dictionary definition of that word are all somewhat at odds. See Text, *infra*.

was physically assaulted and beaten, she determined to remove herself from being publicly associated or affiliated with any political candidates, although she still desired to support various political causes, including specifically the candidacy of George Bush. Specifically, because of the harassment that she had encountered when she worked in the 1968 presidential election, as well as that encountered in the 1964 election, Plaintiff Coleman testified that she had not since then publicly identified herself as the printer who had done political advertising for various candidates for national office. Accordingly, because of her desire "not to be harassed" Plaintiff Coleman had formulated a firm policy for her printing company that it would turn down any future political advertising projects solely because of the disclosure requirement of Article 14.10(b).

Plaintiff Charles E. Drake then took the witness stand and testified regarding the difficulties he had in understanding the requirements of Article 14.10(b) as amended. He also related an episode in which he had placed his name and address on a piece of political advertising in compliance with the statute and was subsequently confronted by an individual who believed the disclosure to constitute an endorsement. The State presented no live testimony and, in fact, conceded that "we have no problems in terms of factual disputes", thereby stipulating the factual allegations contained in the Plaintiffs' Original Complaint. (Argument of Ms. Brown, Attorney for Defendants John Hill and Mark White at hearing held on the 20th of February, 1974, at p. 43 of Transcript).

On February 20, 1974, oral arguments were heard by the Three-Judge District Court (Judges Gee, Bue and Singleton) convened pursuant to 28 U.S.C.A. §§2281 and 2284. Multitudinous and voluminous briefs and post-submission memoranda were filed by Appellants, Appellees and Amici Curiae, and on August 20, 1974, the Three-Judge District Court rendered a 40-page opinion agreeing with the

Appellees' constitutional claims on all points and unanimously declaring the amendment to Article 14.10(b) to be unconstitutional in each respect urged by the Appellees. An Order embodying that opinion, declaring the statute unconstitutional and enjoining its enforcement was also rendered on August 20, 1974.

The Court below considered the arguments in depth and concluded:

> "The first amendment rights to freedom of speech and press exist not only because the authors of the Bill of Rights wished to humor the eccentricities of the man on the soap box but because they wished to secure forever the *means* of making the United States a free market place of ideas. The human voice and the human pen are vital to this goal but no more vital than the physical printing press itself and the persons who operate it." Court's Opinion at p. 3.
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>
> "It is important to realize this when treating the instant case because in our zeal to secure individual first amendment rights it often becomes hard to see that the ideal of free men governed by free men is just as dependent upon the vehicle of free speech — a free press. Not just the freedom to write one's own tract, print it in one's basement, and distribute it on the street corner is at stake but the freedom to go to a printer in the business of printing what comes over the counter, pay him, and have printed one's tract is at stake. The purpose of the first amendment was to protect the person who only operates the press as much as the author-printer not so much because otherwise the printer might lose money but because without the printer many an author could not disseminate his ideas." Court's Opinion at p. 8.

SUMMARY OF THE ARGUMENT

Historically, anonymous pamphlets, leaflets, brochures and books have played an important role in the progress of mankind and especially the founding of our democracy.

Accordingly, it has long been recognized that exposure of the names of printers, writers and distributors of political material would tend to restrict freedom to distribute information and would lessen the circulation of literature critical to the government. Therefore, the First Amendment freedom of the press encompasses the freedom to distribute non-slanderous and non-libelous political material anonymously. *Talley* v. *California*, 1960, 362 U.S. 60, 80 S.Ct. 536, 4 L.Ed.2d 559.

Additionally, the First and Fourteenth Amendments protect rights to associate together to advocate and promote legitimate, albeit controversial, political, social or economic goals. Compelled disclosure of affiliation with such groups engaged in advocacy constitutes an effective restraint on freedom of association, since inviolability of privacy in group association may in many circumstances be indispensible to preservation of freedom of association, particularly where a group espouses dissident beliefs. Indeed, forcing a man to disclose his identity may have such a powerfully deterrent effect upon the exercise of associational rights as to render them meaningless. Therefore, this Court has long protected individuals against disclosure of their political affiliations.

Article 14.10(b) of the Texas Election Code infringes upon both of these constitutional rights. It absolutely prohibits anonymous political material on any campaign or candidate related issue and it necessarily requires that printers disclose their affiliation with or support of particular political positions or candidates.

Each of the State interests allegedly furthered by the printer disclosure requirements of Article 14.10(b) can be achieved in a manner less devastating of the printers' First Amendment rights than the requirement of widespread public dissemination of their identities on each piece of political advertising, required by the present law. For example, a coded bug system, similar to that used to identify

union printing, could very easily be adopted and would be much less encroaching on fundamental rights. Secondly, a central repository system whereby printers submitted copies of each piece of political advertising printed by them would satisfy all of the objectives of the statute without widespread public identification of printers' political associations. Further, Texas could could undertake to prohibit the dissemination of falsely attributed campaign materials, which the State has not yet undertaken to do. At all events, each of the State interests asserted by the Appellants have been previously considered by this Court in the context of First Amendment infringements, and each has been found to be insufficient to justify such devastating encroachments on fundamental liberties as is effected by Article 14.10(b).

Finally, recent decisions from this Court clearly indicate that the disclosure requirements of Article 14.10(b) far transgress constitutionally permissible perameters of legitimate State action.

In addition to the statute's incompatability with the dictates of the Bill of Rights, it is so vague and imprecise as to be, as the District Court concluded, "almost impossible" to comply with. The statute does not explain who is "the person paying for the advertising" and this phrase could refer to the advertising agency paying the candidate's bills, the campaign organization represented by the ad agency, the person making a political donation earmarked for political advertising, the individual signing the check, the messenger boy delivering it, the candidate on whose behalf the advertising payment is made or several other possibilities. Indeed, not even the State of Texas and the Amicus Curiae supporting its position (which drafted the legislation) can agree upon the meaning of the term "the person paying for the advertising," and since Article 14.10(b) carries felony penalties, the printers must not be left to the guessing game which it demands.

Similarly, the term "publisher" is not defined by either statute or state law and could refer to either the printer, the person physically circulating the material, or the person responsible for the preparation of the material, depending upon which of various definitions the statute contemplates. Indeed, each of the interests conjured up in support of the statute suggests a different conclusion to the definitional quandry.

Having been placed in the unenviable position of enforcers of the statute, the printers are entitled to and the Constitution demands proper guidance, free from ambiquity and vagueness.

Article 14.10(b) is therefore void on its face, as the Three-Judge Court correctly concluded.

ARGUMENT AND AUTHORITY

I.

ARTICLE 14.10(b) OF THE TEXAS ELECTION CODE UNCONSTITUTIONALLY INFRINGES UPON APPELLEES' RIGHTS TO POLITICAL AND ASSOCIATIONAL PRIVACY AND ANONYMITY, GUARANTEED TO THEM BY THE FIRST, NINTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

At least two distinct rights are involved in this case — freedom to print political material anonymously (encompossed in freedom of the press and freedom of speech) and the right to associate privately (included within the right to assemble).

The Right to Print Anonymously

That there exists a constitutional right to print political material anonymously cannot be seriously contested, particularly when due consideration is given to historical perspective. It is obvious why the Founding Fathers intended

associational and political privacy to be so zealously preserved — had the publisher of Thomas Paine's *Common Sense* been required to print his name and address on that political leaflet, or had Alexander Hamilton been prohibited from distributing his political writings without disclosing the name of the person printing his anonymous publications, those important documents may never have existed. Indeed,

> "[a]nonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. The obnoxious press licensing law of England, which was also enforced on the Colonies was due in part to the knowledge that exposure of the names of the printers, writers and distribuotrs would lessen the circulation of literature critical of the government. The old seditious libel cases in England show the lengths to which government had to go to find out who was responsible for books that were obnoxious to the rulers. John Liburne was whipped, pilloried and fined for refusing to answer questions designed to get evidence to convict him or someone else for the secret distribution of books in England. Two Puritan Ministers, John Penry and John Udal, were sentenced to death on charges that they were responsible for writing, printing or publishing books. Before the Revolutionary War colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. Along about that time the Letters of Junius were written and the identity of their author is unknown to this day. Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictious names." *Talley* v. *California*, 1960, 362 U.S. 60, 64-65, 80 S.Ct. 536, 538-39, 4 L.Ed.2d 559.

Thus, of historical necessity, freedom of the press encompasses freedom to print anonymously. Any other

reading of the First Amendment is to betray the lessons of history at a cost of inviting tyranny. Accordingly, any statutory enactment which requires the source of political material to be publicly revealed is automatically suspect.

That this constitutional guarantee is as vital today as it was 200 hundred years ago is made unequivocally clear by Mr. Justic Black's opinion for the Court in *Talley* v. *California, supra.* In that case, the Court reviewed and declared "facially unconstitutional" a Los Angeles municipal ordinance which required that handbills have printed on them, among other things, the name and address of the person who printed, wrote, compiled or manufactured the leaflet. "There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression," Justice Black wrote. "[E]xposure of the names of printers, writers and distributors would lessen the circulation of literature critical to the government." *Talley, supra,* 362 U.S. at 64, 80 S.Ct. at 538. See also *Zwickler* v. *Koota,* 1966, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 444, on remand, Three-Judge District Court, S.D.N.Y., 1968, 290 F.Supp. 244, *vacated as moot* sub. nom. *Golden* v. *Zwickler,* 1969, 394 U.S. 1031, 89 S.Ct. 956, 22 L.Ed.2d 113; *Opinion of the Justices,* Mass., June 29, 1972, 41 L.W. 2020; *New York* v. *Duryea,* N.Y. S.Ct., 1974, 351 N.Y.S.2d 978.

The *Tally* decision marked the merger of two previous lines of cases. The first of these, typified by *Lovell* v. *City of Griffin,* 1938, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; *Schneider* v. *State of New Jersey,* 1939, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; *Jamison* v. *State of Texas,* 1946, 318 U.S. 413, 63 S.Ct. 669, 87 L.Ed. 869; and *Martin* v. *City of Struthers,* 1947, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1913; consisted of cases in which the Supreme Court had considered and consistently invalidated state and municipal regulations restricting freedom to publish, distribute and disseminate leaflets, pamphlets and handbills. The thrust

of all these cases was to the effect that the First Amendment protected such activities against virtually all encroachments by state and local law.[2]

The second line of cases assimilated in *Talley* involved Supreme Court invalidation of state action requiring disclosure of membership in particular organizations or associations. In a series of decisions highlighted by *NAACP* v. *Alabama*, 1958, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488; and *Bates* v. *City of Little Rock*, 1960, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed. 480;[3] the Court had refused to allow the states to require a political association's membership lists to be disclosed. The rationale of this line of cases was that compelled disclosure of affiliation with groups engaged in advocacy would constitute an effective restraint on freedom of association because identification and fear of reprisal would undoubtedly discourage many persons from participating in political activities, thereby "chilling" the exercise of First Amendment rights.

Stressing the historical importance of anonymous publications and the present day realities of reprisals against advocates of unpopular political positions, *Talley* merged these two lines of cases to establish the principal that, since handbill distribution could not be discouraged (*Lovell, supra, et al.*) and since identification and disclosure discourages distribution because of the fear of reprisal (*NAACP* v. *Alabama, supra, et al.*), an ordinance requiring identification of the printer and distributor of handbills was anathema to the First Amendment. As has been suggested by at least one commentator, the *Talley* opinion "can be summed up as holding that the peculiar importance of preserving handbill distribution from any deterrent

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[2] Only ordinances regulating the time, place or manner of distribution in a way necessitated by considerations of public health or safety are permissible, and then only to the extent that such regulations do not unreasonably interfere with the exercise of First Amendment rights.

[3] See also cases cited in text, *infra*.

whatever, coupled with the frequency with which handbills proclaim unpopular views and invite reprisal, *automatically renders invalid* any law that requires the sponsors of a handbill to identify themselves."[4]

Talley was followed by *Zwickler* v. *Koota,* Three-Judge Court, S.D.N.Y., 1968, 290 F.Supp. 244. In *Zwickler,* the defendant had been arrested for distributing anonymous handbills criticizing a particular candidate for Congress. Thereafter, Zwickler challenged his arrest on grounds that the New York statute in question was unconstitutional because of its prohibition against anonymous campaign literature concerning a political candidate and he sought declaratory relief to that effect. Initially, the District Court dismissed the complaint on grounds that a federal court could not issue equitable relief (declaratory or injunctive) against the enforcement of a state penal statute. The Supreme Court reversed this holding and remanded the case for consideration of Zwickler's constitutional claims on their merits. *Zwickler* v. *Koota,* 1966, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 444. Thereafter the Three-Judge Court considered the New York statute in depth on the merits and concluded that the identification requirements of the statute rendered it plainly unconstitutional. The Court relied heavily on *Talley* in reaching its decision and concluded that a statute which bars anonymity in the printing and distribution of political material is "void on its face". See also *Branzburg* v. *Hayes,* 1972, 408 U.S. 665,

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[4] Campaign Financing, 9 Harv. J.L. 359, 406 (Emphasis added).

[5] This decision was appealed to the Supreme Court sub nom. *Golden* v. *Zickler,* 1969, 394 U.S. 1031, 89 S.Ct. 956, 22 L.Ed.2d 113. By the time the case reached the Supreme Court this second time, however, the candidate who had been the subject of Zwickler's anonymous criticism had retired from public service and it was unlikely that he would again seek public office. Accordingly, the Supreme Court refused to review the substantive constitutional issues and, instead, remanded the case with instructions that it be dismissed as moot, there being then no case or controversy to be decided. Thus, while the effect of the final judgment in *Zwickler* was that neither declar-

729-30, 92 S.Ct. 2646, 2674, 33 L.E.D.2d 626 (Stewart, J., dissenting) esp. at n.6.

Article 14.10(b) ignores these teachings and contravenes the principal that printers of political publications are constitutionally immune from being required to disclose publicly their identities. The printers have alleged and proved (at the hearing on application for temporary restraining order as well as by affidavits and admitted pleadings) that public disclosure of the names of printers of political material results in economic, physical and other reprisals against the printers by supporters of the opposing political view. Moreover, the Plaintiffs have demonstrated under oath a legitimate, bona fide fear of intimidation, harrassment and reprisal, if required to print their names on all political advertising.[6] On its face Article 14.10(b) demands that printers of political advertising abandon their rights to print anonymously if they choose to exercise their right to print such material. Plainly, such a requirement is inconsistent with the lessons of the past and incompatible with the Bill of Rights, which wisely in the light of historical perspective, guarantees the printers the right to print political matter without revealing their identity.

The Right to Associational Privacy

There is a second way in which Article 14.10(b) infringes on the Printers' constitutional rights. Not only does it deprive them of the right t. print anonymously, it also

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atory nor injunctive relief was ultimately granted, the only consideration of the merits of the First Amendment issues involved resulted in a pronouncement that the New York statute was invalid. The point of *Talley*, the fact that the First Amendment invalidates state statutes which prohibit anonymity in political comment was reinforced and underscored.

[6] The Brief of Appellants consistently stresses that the Plaintiffs below offered "no evidence" to support their allegations. Such statements blatantly misconstrue the record, though undoubtedly such misrepresentations were unintentional and merely reflected a breakdown in communications occasioned by a change of attorneys representing the Appellants. Initially, the

requires that a printer publicly disclose that he has, in whatever manner, supported a particular candidate or position. The printer cannot avoid revealing that he has assisted that particular candidate or political group in some manner — at the very least, by not refusing to undertake political advertising printing for them. By inevitably producing this result of disclosing political association, the statute contravenes the teachings of a long line of Supreme Court cases protecting individuals against disclosure of their political affiliations.[7] See *N.A.A.C.P.* v. *Alabama*,

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Plaintiffs submitted uncontroverted affidavits from each of the Plaintiffs swearing as follows:

> "I have reason to fear and do fear that if the name of my printing company is printed on political advertising, persons seeing such advertising will mistakedly believe that I am personally endorsing the candidate or position espoused in the political advertising. Furthermore, if I undertake to print political advertising and print my name on such advertising, I have reason to fear and do fear that I will suffer intimidation, harassment and economic reprisals, including irreparable loss of business."

Moreover, live testimony was presented subject to cross-examination at the proceedings held on September 18, 1973, a copy of the transcript of which is included in the record on appeal. Further, subsequent to the oral argument before the Three Judge District Court, further evidence was presented by the Plaintiffs without objection from the Appellants establishing further specific incidence of repercussions from compliance with Article 14.10(b)'s disclosure provisions. In addition, stipulations of Fact were entered into between the parties, including, for example, a stipulation that:

> "That in furtherance of his official duties and responsibilities, Defendant CAROL VANCE will faithfully seek compliance with and enforce the provisions of Article 14.10(b) and will prosecute any printer or publisher who violates its requirements whenever such violations are brought to his attention."

Further, the attorney for the Appellants stipulated at oral argument that "we have no problems in terms of factual disputes," thereby admitting the factual allegations contained in the Plaintiffs' Original Complaint.

[7] The right to associational privacy runs two ways — it precludes the state from demanding membership information from the association (as in *N.A.A.C.P.* v. *Alabama* and *Bates* v. *City of Little Rock*) and it also prevents the State from requiring the individual to reveal the organization of which he is a member as in *Shelton* v. *Tucker* and *Lamont* v. *Postmaster*).

1958, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488; *Bates* v. *City of Little Rock*, 1960, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480; *Louisiana ex. rel Gremillion* v. *N.A.A.C.P.*, Three Judge, E.D.La., 1961, 181 F.Supp. 37, *aff'd.*, 366 U.S. 293, 81 S.Ct. 1336; *Gibson* v. *Florida Legislative Committee*, 1962, 372 U.S. 539; *Shelton* v. *Tucker*, 1960, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231; *Pollard* v. *Roberts*, E.D.Ark., 1968, 283 F.Supp. 248, *aff'd.*, 393 U.S. 14; *Lamont* v. *Postmaster General*, 1965, 381 U.S. 301, 85 S.Ct. 1493, 14 L.Ed.2d 398; *DeGregory* v. *United States*, 383 U.S. 825, 86 S.Ct. 1148, 16 L.Ed.2d 292; *United States Servicemen's Fund* v. *Eastland*, D.C.Cir., 1973, 488 F.2d 1253, cert. granted sub nom. *Eastland* v. *U.S. Servicemen's Fund*, Oct. 15, 1974, 43 L.W. 3208; *Irish Northern Aid Committee* v. *Attorney General*, 1972, 409 U.S. 1080, 93 S.Ct. 679, 34 L.Ed.2d 669 (Marshall, Douglas and Brennan dissenting from denial of certiorari).

"The rationale of these decisions is that the First and Fourteenth Amendments protect rights to associate together to advocate and promote legitimate albeit controversial, political, social or economic actions; that when the objective of the group or the group itself is unpopular at a given time or place, revelation of the identities of those who have joined themselves together or have affiliated with the group may provoke reprisals from those opposed to the group or its objectives; and that the occurrence or apprehension of such reprisals tends to discourage the exercise of the rights which the Constitution protects." *Pollard* v. *Roberts*, *supra*, 283 F. Supp. at 256.

Moreover, "it is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an]***effective***restraint on freedom of association***. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations***. Inviolability of privacy in group association may in many circumstances be indispensable to pre-

servation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP* v. *Alabama, supra.* Not only the Courts but also the commentators have generally conceded the obvious — that "forcing a man to disclose his identity may have such a powerfully deterrent effect upon the exercise of political rights as to render them meaningless." Redish, Campaign Spending Laws and the First Amendment, 46 N.Y.U.L.Rev.900,934 (1971). See also Campaign Financing, 9 Harv.J.L. 359, 405 (1972). One primary cause of political apathy is said to be the serious fear that open political involvement may tend to alienate friends, neighbors and employers. Rosenberg, Some Determinants of Political Apathy in American Democracy: Essays on Image and Realities 28, 29-30 (1964). Embarrassment, reprisal and other direct harms from public participation in political activities are evident and repressive. The fear of losing customers by appearing to support a candidate or position opposed by the customer is real and pressing to the printers, as common sense would indicate. More importantly, it is the small printer — the "little man" — who can least afford to offend his customers. Article 14.10(b) requires that he take this and other risks, however, if he chooses to exercise his constitutional right to print political material.

In doing so, Article 14.10(b) infringes rights to associational privacy. In the first place, as the evidence in this case shows, there is a substantial probability that persons seeing printers' names on political advertising will mistakedly consider the disclosure an endorsement of that candidate by the printers. Secondly, the statute requires that the printer reveal that he has been of some assistance to the candidate, whether the printer desires that fact to be publicly known or not. The choices posed by the statute are intolerable — either avoid the possibility of reprisal by refusing to undertake political advertising or abandon constitutional rights of associational privacy. The first choice produces a classic example of the "chilling effect" doctrine:

the latter results in direct abridgement of fundamental rights.

> "In the midst of the current zeal to prevent the fraudulent campaign practices that seem to have prevailed in the 1972 election year, legislatures and Courts should not lose sight of that which is most fundamental to our society. The importance of the lone dissenter cannot be overestimated. To undermine the right to speak anonymously is to jeopardize this ability to dissent."[8]

Concurring Opinion at p. 8.

Thus, as has been seen, Article 14.10(b) plainly encroaches on First Amendment rights. It ignores the

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[8] As the Three-Judge Court correctly held, the fact that the printers are compensated for printing political advertisements is completely irrelevant here. Clearly, purely commercial speech is not protected by the First Amendment. *Valentine* v. *Chrestensen*, 1942, 316 U.S. 52; *Pittsburgh Press Co.* v. *The Pittsburgh Commission on Human Rights*, 1973, 413 U.S. 376, 93 S.Ct. 2553, 37 L.Ed.2d 669. Political advertising, however, by definition, is not purely commercial within the *Valentine* meaning, as was recently explained with unmistakable clarity in *Pittsburgh Press Co., supra:*

> "[S]peech is not rendered commercial by the mere fact that it relates to an advertisement. In *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), a city official of Montgomery County, Alabama, brought a libel action against four clergymen and the New York Times. The names of the clergymen had appeared in an advertisement, carried in the Times, criticizing police action directed against the members of the civil rights movement. In holding that this political advertisement was entitled to the same degree of protection as ordinary speech, the Court stated:
>
> 'That the Times was paid for publishing this advertisement is as immaterial in this connection as is the fact that newspapers and books are sold.' 376 U.S. at 266.
>
> See also *Smith* v. *California*, 361 U.S. 147 (1959); *Ginzberg* v. *United States*, 383 U.S. 383, 474 (1966).
>
> "If a newspaper's profit motive were determinative, all aspects of its operations – from the selection of news stories to the choice of editorial position – would be subject to regulation if it could be established that they were conducted with a review toward increased sales. Such a basis for regulation clearly would be incompatible with the First Amendment." 413 U.S. 384-85, 93 S.Ct. 2558.

fundamental right to print anonymously (a necessary concomitant of freedom of the press) and it requires disclosure of participation in political activities in derogation of rights to political and associational privacy, necessary corollaries of the First and Ninth Amendment freedoms to assemble. Its unconstitutionality is, as the Three-Judge District Court unanimously concluded, transparent.

Consideration of State Interest

Of course, the fact that a particular statutory enactment infringes upon constitutional liberties, does not automatically render the statute invalid. On the other hand, state action infringing upon the exercise of First Amendment rights cannot be sustained unless the governmental interests asserted to support such impingement are "compelling" and the State has shown that no alternative forms of regulation would combat the abuses without infringing First Amendments rights as severely. *Shelton* v. *Tucker,* 1960, 364 U.S. 479, 487-490, 81 S.Ct. 247, 251-253, 5 L.Ed.2d 231; *Talley* v. *California,* 362 U.S. 60, 64, 80 S.Ct. 536, 538, 4 L.Ed.2d 559; *Schneider* v. *State of New Jersey,* 308 U.S. 147, 161, 60 S.Ct. 146, 150, 84 L.Ed. 155; *Martin* v. *Struthers,* 319 U.S. 141, 144-149, 63 S.Ct. 862, 863-866, 87 L.Ed. 1313; *Sherbert* v. *Verner,* 1963, 374 U.S. 407, 83 S.Ct. 1790. See also *United States Servicemen's Fund et al.* v. *Eastland, supra; NAACP* v. *Alabama,* 357 U.S. 449, 463-464, 78 S.Ct. 1163, 1172, 2 L.Ed.2d 1488; *Bates* v. *City of Little Rock,* 361 U.S. 516, 80 S.Ct. 412.

It is not sufficient that the state have a legitimate purpose thought to be achieved by the challenged enactment, for "a desirable end cannot be promoted by prohibited means." *Meyer* v. *Nebraska,* 1922, 262 U.S. 390, 401, 43 S.Ct. 625, 628, 67 L.Ed. 1042, 1046. "When legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have 'less drastic'

impact on the continued vitality of First Amendment freedoms." *United States* v. *Robel*, 1967, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508.

Several state interests purportedly furthered by Article 14.10(b) are urged by the Defendants as legitimizing justifications for Article 14.10(b)'s undeniable encroachment upon First Amendment liberties. As will be seen, however, all of these concerns have been previously considered by the Courts in the context of First Amendment cases and all of them have been held insufficient to justify curtailment of constitutional guarantees of political anonymity and associational privacy.

Initially the State and supporting Amicus contend that Article 14.10(b) furthers the salutory effect of purifying the electoral process by providing a means of identifying persons responsible for fraudulent, deceitful, libelous, obnoxious or falsely attributed statements in a political campaign.[9] Interestingly, the State of Texas has not made any of these activities criminal by any statutory enactment other than Article 14.10(b),[10] and that statute allows such conduct so long as the printer and the person paying for the advertising identify themselves. This absence of affirmative penal sanctions for the conduct allegedly exposed by Article 14.10(b) strongly suggests that the State's interest in this type of activity is neither as overwhelming nor as "compelling" as the Defendants and Amicus Curiae might suggest. Cf. *Roe* v. *Wade*, 1973, 410 U.S. 113, 157, n.54, 93

[9] Professor Emerson argues that, in general, "purification" efforts conflict with First Amendment rights and are hence invalid. See T. Emerson, Toward a General Theory of the First Amendment 103-105 (1966).

[10] The Texas Legislature is presently considering enactments which would make it unlawful to disseminate a political advertisement which is designed to convey the impression that it emanates from a source other than its true source, if the person charged had prior knowledge of that fact at the time the offense was committed. The proposed bill is presently pending before a House Subcommittee.

S.Ct. 705, 729, 35 L.Ed.2d 147 (fact that Texas has no other penal statutes protecting the life of a fetus rendered state's asserted interest in protecting prenatal life suspect).

Assuming, however, that the State of Texas possesses a legitimate desire to ferret out this kind of activity (an assumption rebutted by the dearth of other legislative activity prohibiting such conduct), *Talley* v. *California* considered precisely that state justification for a printer disclosure requirement and found it insufficient to overcome the printers' First Amendment rights to anonymity. In that case the state had argued that the ordinance was aimed at the prevention of "fraud, deceit, false advertising, negligent use of words, obscenity and libel," all of which were summarized by Mr. Justice Harlan as being "of an obnoxious character." The Court invalidated the statute nonetheless, and Article 14.10(b) suffers the same infirmity as the Los Angeles Ordinance struck down in *Talley* — neither statute is limited in its broad prohibitions to these obnoxious activities. Both enactments require printer identification on *all political advertising*, not merely that which is false, fraudulent, misleading or falsely attributed.[11]

The *Talley*-born rejection of identifying sources of obnoxious campaign material as a justification for infringement of First Amendments rights was underscored by the Three-Judge Court in *Zwickler, supra:*

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[11] Admittedly, Article 14.10 is somewhat limited by its application only to "political advertising", while the *Talley* ordinance encompassed all handbills, whether dealing with political matters, religious matters, commercial matters or otherwise. On the other hand, the *Talley* ordinance applied only to handbills, while Article 14.10(b) covers all types of political advertising, including billboards, handbills, books, campaign buttons, t-shirts and all other forms of printed campaign paraphernalia. Moreover, to the extent that certain types of speech are protected more avidly than others by the First Amendment, certainly *political* discussion deserves the broadest immunity from governmental intrusion of all kinds of speech. *New York Times* v. *Sullivan*, 1964, 376 U.S. 254; *New York Times Co.* v. *United States*, 1972, 403 U.S. 713.

> "It is true — if one were to follow Defendant's reasoning — that if every colporteur were constrained by statute to disclose whose money it was that paid the printer of the tract he hawks, the information thus extruded might in some instances blaze a trail to a criminal source or misuse of funds. A constitutional right of those privileged to speak with anonymity unbreached, however, may not be disregarded to facilitate the prosecution of others who by their offending may have forfeited that right.
>
> The current attitude of the Courts is to place the emphasis on the protection and preservation of the freedom of the many to advocate conduct or to reprehend misconduct in public affairs, not to redress the wrongs, real or fancied, of the individual office holder or aspirant for what is uttered concerning his past or prospective management of those affairs." *Zwickler* v. *Koota, supra,* 290 F.Supp. at 253-54.

Similarly, in *Hiett* v. *United States,* 5 Cir., 1969, 415 F.2d 664, the Fifth Circuit considered and invalidated, on First Amendment grounds, a Federal statute which prohibited the use of the mails to distribute material concerning the availability of foreign divorces. Judicial approval of the statute was urged on grounds that it was designed to prevent divorce frauds and other illicit conduct. Nonetheless, the Court held that "the possibility of fraud in the procurement of divorces, however, does not justify a statute that makes all mailing of foreign divorce information for business purposes a potential crime." 415 F.2d at 673. Thus, the interest of the State in preventing fraud in matters crucial to the public interest is not sufficient to overcome First Amendment rights, where that objective may be achieved by less drastic means.

The conclusion that the interest asserted by the state is insufficient to allow derogation of the printers' First Amendment rights is bolstered substantially by the fact that there are alternate means available to the state for effecting this very purpose without damaging the Plain-

tiffs' constitutional rights so devastatingly. For example, a law prohibiting the dissemination of falsely attributed campaign material would effectively serve that state interest without requiring the printers to surrender rights to print anonymously. Similarly, a requirement that the printers supply a copy of all political advertising to a central depository where the identity of the printer would be available to interested persons would at least substantially minimize the deleterious effects inherent in the present law of widespread public dissemination of the printer's identity. Although such a scheme would encroach somewhat on the printers' rights of anonymity, it would materially reduce the substantial danger inherent in the present law that persons seeing Plaintiff's names on political advertising of particular candidates will mistakedly consider such association an endorsement of that candidate by the Plaintiffs. Thus, this scheme would less drastically interfere with the Plaintiffs First Amendment rights, though some intrusion would be present nonetheless.

Thirdly, the state could provide for a coded number "bug" system similar to that presently used to identify union printers. In this system, each printer who undertook political advertising would be assigned a number and that number would appear on all political advertising printed by him. Any interested person could readily ascertain the name and address of the printer assigned that number. Again, the effect of such a scheme would be to minimize the likelihood of reprisal or public misconception fostered by the present law.[12]

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[12] Amicus Curiae objects to the coded number "bug" system as constituting a prior registration scheme unconstitutional under *Thomas* v. *Collins*, 323 U.S. 60 (1945). The remedy to the prior registration difficulties raised by Amicus would be simply to give the printer an option of obtaining a coded number or printing his name and address on the political advertising. Clearly such an alternative would accomplish all of the objectives conjured up in support of Article 14.10(b) in a manner much less devastating of basic constitutional freedoms.

Unless the state can persuasively demonstrate that these less restrictive means would not adequately further the interests asserted, Article 14.10(b) must be declared unconstitutional.

A second justification posed in support of Article 14.10(b) is that it allows the voters to be informed about who is supporting particular political candidates or positions.

As Amicus phrases it, the statute allows the voting public to discover what companies are being paid by whom to print advertising for candidates and political committees. Assuming for the moment that the voters have a right to know the name of the person paying for the political advertising, there is absolutely no reason why the public needs to be informed about the name and address of the printer, unless the public is supposed to infer that the printer supports that particular candidate or position. Here the state is in a hopeless dilemma. Either the statute suggests that the printer supports the candidate (in which case rights of associational privacy are clearly violated and the *NAACP* line of cases controls) or the requirement of printer identification does not provide the voters with any useful information (in which case this justification for the statute fails).[13]

At all events, the "informed voter" justification for allowing encroachment on First Amendment rights has been specifically considered and rejected by the Supreme Court. In *Andersen* v. *Martin,* Three-Judge Court, M.D.Ala., 1962, 206 F.Supp. 700, the Plaintiffs had challenged a Louisiana statute which required the race of a political candidate to be printed on the ballot. The District Court had upheld the law (despite the vigorous dissent of

[13] The printers have specifically not objected to the requirement that the name of the person paying for the advertising be printed thereon, except to the extent that such phrase is ambiguous and manifestly in need of clarification as to its precise requirements.

Judge Wisdom) on the grounds that the state could legitimately assist the voters in obtaining information about political candidates. The Supreme Court summarily reversed, declaring the statute clearly unconstitutional. The "informed voter" rationale was plainly insufficient to justify the infringement of First Amendment rights. *Andersen* v. *Martin*, 1962, 375 U.S. 399, S.Ct. 454, 11 L.Ed.2d 430.

The *Andersen* result was manifestly correct. Importantly, however, the statute ruled unconstitutional there presented more substantial justifications than Article 14.10(b). In the first place, the disclosure required by the Alabama statute related directly to the candidate, not to his supporters or persons who merely did printing for him. Presumedly the interests of a candidate in anonymity and political privacy are far less substantial than those of a person only tangentially involved in the campaign. Secondly, the information sought was certainly more relevant to the voters than the name and address of a printer. Sadly, but unescapably, the race of a political candidate may well be a significant factor in a particular voter's choice in an election. Moreover, the race of a candidate may have some relevance to his effectiveness in a particular public office in view of community sentiments or other circumstances. At all events, the voters have an absolute right to reject a candidate for any reason they chose, including deplorable, racist reasons, and it would be a sham to suggest that voters in Alabama did not consider the race of a candidate an important electoral factor. Thus, the statute declared unconstitutional in *Anderson* served the "informed voter" function much more substantially than the printer identification requirement of Article 14.10(b). *Andersen*, however, teaches that such a justification is insufficient when encroachment on First Amendment freedoms is the price.

Indeed, the *Andersen* case demonstrates dramatically why intrusions on First Amendment liberties cannot be tolerated,

even in the name of informing the electorate. If the state can violate First Amendment rights to inform the voters of who is printing political advertising, there is no reason why the state cannot infringe on First Amendment rights to inform the voters of any fact or factor which may have some bearing on their electoral decision. The Pandora's box which this approach opens is terrifying. If the state can require disclosure of information about a candidate's printer in informing the public, why not information about the candidate's race, religion, or family? Who decides what is "necessary"? If the public can be informed by the state about political candidates, why not about Judges or businessmen? A requirement, for example, that all Jewish businessmen wear yellow armbands so as to inform the public of who they are doing business with would be permissible under this approach. Admittedly the argument is hyperbolic, but the extreme follows directly and inexorably from the reasoning of the Appellants.

In *Thomas* v. *Collins*, 1944, 323 U.S. 538, 65 S.Ct. 315, 89 L.Ed. 445, the "informed public" argument was again considered and rejected. In that case the State had required public speakers to register in advance and disclose certain basic information about themselves. The justification proferred by the State was that this modicum of information would assist the public in evaluating the speaker's comments by enlightening them of their background. The Supreme Court invalidated the ordinance, on First Amendment grounds, however, despite its service to the "informed public" function. See also, *DeJonge* v. *Oregon*, 1937, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278.

The same result was reached most recently in *Lewis* v. *Baxley*, Three-Judge Court, M.Ala., 1973, 368 F.Supp. 768. In that case the Court invalidated a state statute requiring newsmen to disclose their interest in pending legislation. The State argued that this law provided information to the public on the newsmen's interests, so that the news reported could be properly evaluated by considering the bias of its

source. The "informed public" function was undoubtedly served by the statute, but it was struck down nonetheless because the disclosures required violated First Amendment rights.

A third justification offered in support of the present statute is that it assists political candidates in replying to campaign accusations. Again, this justification has been considered and rejected by judical authority. The argument was raised and swiftly rejected in *Koota, supra:* "Government assistance to a public figure, however, in ferreting out a 'producer' whom he may the more easily identify and from whom he may secure damages as balm for his individual loss at criticism of his official performance weighs in the balance as too high a price to be exacted for First Amendment freedom of expression for all. The freedom to animadvert upon public figures and affairs primes all others." 240 F.Supp. at 252-53. While the opportunity to reply to political accusations is certainly desirable, that opportunity in no way requires widespread public dissemination of the identity of a printer. Either the "bug" system or the centralized depository system mentioned above would allow a slandered candidate the ability to trace the source of the fraudulent campaign material without the dangers inherent in widespread dissemination of the printer's identity on all political advertising. False attribution could be made a crime, precluding Segretti-type activities without infringing upon the printers' constitutional right. In sum, the opportunity to reply can be sufficiently protected without the inhibiting requirement of widespread public disclosure of the printer's name and address.

Moreover, this Court has only recently considered at length and unanimously rejected "right to reply" arguments as justification for infringements on First Amendment rights of printers. In *Miami Herald Publishing Co.* v. *Tornillo*, 1974, U.S. , 94 S.Ct. 2831, this Court resoundingly disapproved a Florida "right to reply" statute because of the

blatant unconstitutionality of requiring a newspaper printer to print that which he chose not to print.

The same result was reached in *Mills* v. *State of Alabama*, 1966, 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed. 2d 484. In *Mills*, Alabama had passed a law barring newspaper editorials on election issues or candidates on election day. The state had argued that this enactment was promulgated to insure that all candidates had an opportunity to reply to any political accusations. The Supreme Court rejected this justification, however, declaring that "it is difficult to conceive of a more obvious and flagrant abridgment of the constitutionally guaranteed freedom of the press." Obviously, there is no material difference, so far as the First Amendment is concerned, between restricting what the press may print and affirmatively requiring that the press print particular matter. In either case, the justification of affording an opportunity to reply is insufficient to overcome the dictates of the First Amendment that there be no law enforced which "abridges" freedom of the press.

The fourth justification proferred in support of the Texas Election Code provision here contested is that it deters Segretti-type and Ins:o-type campaign "dirty tricks." The State of Texas, however, has not directed its penal sanctions against perpetrators of such illicit campaign mischief, but rather against the printers. *Lewis* v. *Baxley*, Three-Judge Court, M.D.Ala., 1973, 368 F.Supp. 768 demonstrates the inefficacy of this approach. In that case the State of Alabama had required that newsmen file a statement of economic interest stating that they were not employed by any employer having legislation pending before the state legislature. The State had argued that the enactment had deterred surreptitious lobbying by persons purporting to be members of the press. Admitting that deterence of unlawful lobbying constituted a legitimate state interest, the Court nonetheless invalidated the Alabama statute with he following remarks:

> "A part of the requirement of a substantial nexus • • • is the requirement that the State pursue its governmental interests narrowly rather than broadly. In the context of this case, that requirement means that the State may regulate lobbying and lobbyists as such, but the State may not require disclosure from occupational groups virtually at random upon the theory that one or more members may be lobbyists. If this is the governmental interest to be protected, the State should make its attack upon lobbyists as such."

That same reasoning applies to Article 14.10(b). If the State desires to prevent or deter campaign dirty tricks it should make its attack directly upon the perpetrators. To paraphrase *Lewis*, the State may not require disclosure from occupational groups [printers] virtually at random upon the theory that one or more members may be conduits to unethical campaign activities. Such an approach sweeps too broadly, where First Amendment liberties are at stake, and narrower, less restrictive means must be adopted. Requiring all printers of political advertising to identify themselves, at the risk of reprisal and intimidation, because a few printers may be used by unethical candidates to further illegitimate purposes is a remedy far more harmful than the malady allegedly cured.[14]

Indeed, the Courts have consistently invalidated political disclosure statutes despite asserted justifications more urgent than those offered by the Defendants in support of Article 14.10(b).[15] For example, in *Bates* v. *Little Rock, supra*, the Respondent had demanded the membership lists of the

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[14] It is interesting to note here that both Insco and Segretti were convicted for their illicit activities by conviction for violating 18 U.S.C.A. § 612, the Federal Attribution Statute. Importantly, § 612 is directed against the perpetrators of the "dirty tricks", not against the printers, and it has apparently proved to be an adequate means of achieving this end.

[15] One reason why the Courts have been so adamant in striking down disclosure statutes is that the inhibiting effects of such laws are particularly chilling on highly critical dissident expression. Obviously, many printers would not wish for their

NAACP in aid of its power as a municipality to tax a business within its corporate limits (and it cannot be denied that the power to tax is absolutely vital to any governmental unit). Similarly in *People* v. *Mishkin*, 17 A.D.2d 243, 234 N.Y.S.2d 342, (1st Dept., 1962), aff'd without opinion, 15 N.Y.2d 671, 255 N.Y.S.2d 881, 204 N.E.2d 209 (1964), a printer identification statute very similar to Article 14.10(b) was found unconstitutional, despite the state's urging that the disclosure requirements greatly facilitated enforcement of the State's obscenity statutes. *Pollard* v. *Roberts, supra*, invalidated state action which had sought identification of contributors to the 1966 Republican campaign fund in Arkansas, as part of an investigation of alleged vote-buying and other election law violations. In *Shelton* v. *Tucker, supra*, the state interest asserted to support disclosure was the interest of the State in evaluating prospective teachers in the public schools. Perhaps the most serious justification to be offered (and rejected) was supplied by *Bursey* v. *United States*, 2 Cir., 1972, 466 F.2d 1085, where the government had sought the identification of various members of the Black Panther organization as part of an investigation into threats on the life of the President of the United States. The Court concluded, however, that not even that alleged justification was sufficient to allow infringment of the Panther's First Amendment rights to associational privacy, on the facts of that case.

Appellant's Cases

The Appellants' reliance on early federal cases (*Burrough & Cannon* v. *United States*, 1934, 290 U.S. 534; *Lewis Publishing Co.* v. *Morgan*, 1913, 229 U.S. 288; and *United States*

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names to appear in any form or fashion on political advertising highly critical of an incumbent governmental official or otherwise extremely unpopular in the position advocated. Accordingly, a necessary result of Article 14.10(b) would be to render printers less available to dissident groups or others engaged in particularly unpopular advocacy. The more critical and unpopular the expression, the less likely that printers will undertake the advertising if they must therein identify themselves. The fewer printers available, the greater the inhibitory and chilling effects on robust public discussions of controversial issues.

v. *Harriss*, 1954, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989) to support Article 14.10(b) is misplaced. The *Lewis Publishing Co.* case, decided in 1919, upheld an Act of Congress requiring any newspaper using the second-class mails to publish the names of its editor, publisher, owner and stockholders. The case was decided not on First Amendment grounds, but on the basis of Congress' plenary powers to control the mails. The Court simply decided that Congress' power to regulate postal service encompassed the authority to insure that organizations taking advantage of reduced rates for second-class mail came within the class of persons entitled to such cut-rate benefits. The law there challenged applied only to users of second-class mail privileges and did not require disclosure except by persons desirous of availing themselves of the benefits of lower mail costs.

The *Burroughs* case is similarly inapplicable here since the sole constitutional challenge presented in *Burroughs* concerned an alleged interference with the power of the state to appoint electors. No First Amendment issues were even considered in *Burroughs*.

With regard to *Harriss*, the significance of that case is in its *limiting* construction of the term "lobbying" as used in the Federal Lobbying Act so as to avoid widespread loss of political anonymity. The *Harriss* case must be viewed in light of the question it posed, namely whether the term "lobbying" should be broadly construed to impose registration requirements upon all persons whose activities directly or indirectly influenced the passage or defeat of any legislation, or narrowly, as the Court did, to encompass only direct communications with members of Congress. The Court chose the more restricted interpretation. The effect of *Harriss* was, therefore, to limit the authority of Congress to intrude upon First Amendment rights to political anonymity, not to expand them. See *NAACP* v. *Alabama*, supra, 78 S.Ct. at 1171; *Zwickler* v. *Koota*, *supra* 290 F. Supp. at 255.

This reading of *Harriss* is reinforced by the case of *United States* v. *Rumley*, 1953, 345 U.S. 41, 73 S.Ct. 543, 97 L.Ed. 770. In that case the Defendant had refused to disclose to a House Select Committee on lobbying activities the names of the persons who made bulk purchases of his books. In order to avoid the "serious constitutional questions" regarding acknowledged First Amendment interests in political anonymity,[16] the Court defined the term "lobbying" as restrictively as possible so as to exclude Rumley's activities from the scope thereof and render consideration of the constitutional argument unnecessary.[17] It is the same limiting definition process which *Harriss* represents as is evident from the Supreme Court's reliance on and interpretation of *Harriss* and *Rumley* in *N.A.A.C.P.* v. *Alabama*, *supra*, 357 U.S. at 461, 78 S.Ct. at 1171, citing those cases as standing for the principle that enactments threatening to abridge rights to political anonymity must be narrowly construed so as to avoid that result. See also, *Zwickler* v. *Koota*, *supra* 290 F.Supp. at 225. *Harris*

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[16] "Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of constitutionality in view of the prohibition of the First Amendment." *Rumley*, *supra*, 345 U.S. at 46, 73 S.Ct. at 546, 97 L.Ed. 770.

[17] This same approach of construing disclosure statutes very narowly limiting their applicability so severely that the serious constitutional issues need not be faced because the plaintiff is no longer within the reach of the statute is evident in two recent cases involving the Federal Election Campaign Act and the advertising disclosure aspects thereof. In *U.S.* v. *National Committe for the Impeachment of the President*, 2 Cir., 1973, 469 F.2d 1135, and *A.C.L.U.* v. *Jennings*, Three-Judge Court, D.C., 1975, 366 F.Supp. 104) (prob. juris. noted sub. nom. *Staats* v. *A.C.L.U.* 1974, 94 SCt. 3066) the Courts were asked to review and declare unconstitutional the disclosure provisions of the Act as violative of the plaintiff's First Amendment rights. Both Courts expressed grave doubts about the constitutionality of the Act but by construing the Act narrowly, decided that the plaintiffs did not come within its coverage, thereby avoiding decision on constitutional grounds.

does not, as the Defendants imply, sanction political identification enactments; it limits them.[18]

The only recent case which offers even remote support for the Defendants' position is *United States* v. *Scott*, N.D.Dak., 1961, 195 F.Supp. 440.[19] That case is neither controlling or persuasive here, however, and is clearly distinguishable. In the first place, it should be noted that *Scott* is a single Judge district court case with no appellate history. More importantly, the case involves the Federal Attribution Statute, 18 U.S.C.A. § 612. That statute is significantly different from the Texas Article 14.10(b) in at least two important respects: (1) The Federal Attribution Statute requires disclosure of the name of the persons "responsible" for the publication and the names of the officers of each association. Thus, it is directed against active participants in a high level federal election campaign whose anonymity, as a practical matter, is generally non-existent anyway. At all events, the Federal act is directed toward the perpetrators of illicit activities, not the persons incidentially involved (such as printers). (2) The Federal statute is applicable only with regard to the offices of President, Vice President, Senator, Representative or Resident Commissioner to Congress. These are, of course, the highest political offices in the land. With so much at stake, the constitutional considerations weigh differently.

Thirdly, *Scott* does not rest on a rationale applicable to the case at bar, since § 612 applies only to statements relating to or concerning a candidate for President, Vice-President, Senator, Representative or Resident Commissioner in Congress. Article 14.10(b), on the other hand, encompasses political advertising concerning all public officers and candidates and all propositions submitted to a vote of the people.

[18] To the extent, if any, that *Harriss* can be read as approving some form of disclosure provisions despite First Amendment mandates, it was, of course, severely limited by the Supreme Court's subsequent decision in *Talley, supra.* See Redish, supra, 46 N.Y.U.L.R. 900,929.

[19] *United States* v. *Insco*, M.D.Fla., 1973, 365 F.Supp. 308, on which the Appellants relied in the Court below, has now been reversed on appeal. *United States* v. *Insco*, 5 Cir., 1974, 496 F.2d 204.

Moreover, *Scott's* distinction of *Talley* is less than clear.[20] Without much explanation, the statute was upheld in *Scott* with the simple generalization that "it is a valid exercise of the legislative power in the national interest." Without suggesting what the result may have been had the statute been more closely scrutinized, it is apparent that the *Scott* Court erroneously applied the "rational basis" test rather than the "compelling state interest" test in considering the constitutional argument. Therefore, *Scott* does not provide useful precedent for considering the constitutionality of Article 14.10(b).

The Appellants have also suggested that their position is supported by the recent Supreme Court cases of *Branzburg* v. *Hayes*, 1972, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626; and *California Banker's Association* v. *Shultz*, 1974 U.S. , 94 S.Ct. 1494. With regard to *Branzburg*, however, Mr. Justice White, writing for the majority, went out of his way to emphasize that "these cases involve . . . no express or implied command that the press publish what it prefers to withhold. . . No attempt is made to require the press to publish its sources of information or indiscriminately to disclose them on request." 408 U.S. at 681-82, 92 S.Ct. at 2656-57. On the contrary, Article 14.10(b) does

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[20] The Court suggested that the Defendant in Scott had not made a sufficient demonstration of likelihood of reprisal. Clearly, however, it is the legitimate *fear* of reprisal, not the fact of reprisal, which imposes the "chilling" effect on the exercise of First Amendment freedoms and renders disclosure enactments unconstitutional. See, e.g., Talley, supra; NAACP v. Alabama, supra; and Pollard v. Roberts, supra:

> "While there is no evidence of record in this case that any individuals have as yet been subjected to reprisals on account of the contributions in question it would be naive not to recognize that the disclosure of the identities of contributors to campaign funds would subject some of them to potential economic or political reprisals of greater or lesser severity * * *. [T]he occurrence or *apprehension* of such reprisals tend to discourage the exercise of the rights which the Constitution protects." 283 F.Supp. at 256, 258 (Emphasis added).

See also Redish, supra, 46 N.Y.U.L.R. at 934.

require the press to publish its sources and indiscriminately disclose them to all persons who receive the printed material. Further, unlike *Branzburg*, Article 14.10(b) does not limit its disclosure provisions to a requirement that a printer disclose information only to a duly constituted Grand Jury investigating a specific criminal episode. Rather, Article 14.10(b) requires that the information solicited be publicly disseminated to all persons receiving the political material in question. In this regard, Article 14.10(b) would be analogous to a law which required every newspaper story to identify the source of the news story on the face of the article. Clearly any such requirement would be transparently unconstitutional, as *Branzburg* suggests. Yet Article 14.10(b)) is a precise functional equivalent of such a manifestly invalid enactment. See also Dissenting Opinion of Mr. Justtice Stewart, esp. at 408 U.S. 729-735, 92 S.Ct. 2673-2677.

With regard to the *California Banker's Association* case, that case supports the Appellees' position, not the Appellants'. That case considered the constitutionality of various provisions of the so-called Bank Secrecy Act of 1970 and the implementing regulations promulgated thereunder by the Secretary of the Treasury. Carefully distinguishing the recordkeeping provisions of Title I of the Act from the reporting requirements of Title III of the Act, the Court upheld the constitutionality of Title I because the records required to be maintained would not be generally obtainable by the public or the government and, in fact, "were to be available only by normal legal process." 94 S.Ct. at 1524. The Court stressed, however, that "neither the provisions of Title I nor the implementing regulations require that any information contained in the records be *disclosed* * * *," and expressed doubt that the Secretary would have authority to require the reporting of any of the records required to be maintained under Title I of the Act. With regard to the ACLU argument that Title I violated First Amendment rights to associational privacy, the Court simply ruled that since no disclosure had

been sought by the Government, the Court "is simply not in a position to determine whether an effort to compel disclosure of such records would or would not be barred by such cases as *NAACP* v. *Alabama, supra.*" 94 S.Ct. at 1515. Thus, since no *disclosure* had been sought (as opposed to mere reporting), no First Amendment issue was properly before the Court.

Obviously, Article 14.10(b) does not possess the virtue which saved Title I from unconstitutionality—unlike the recordkeeping provisions of Title I, Article 14.10(b) does require disclosure. Moreover, the disclosure required by the Texas statute must be publicly disseminated on every item of political advertising undertaken by the printer. Significantly, the printers have not objected to the recordkeeping provisions of Article 14.10 and the Texas Election Code. Indeed, they have suggested a recordkeeping provision (central repository scheme) as a less restrictive alternative to the present law. What and all the printers have challenged is the *disclosure* requirements of Article 14.10(b) which call for widespread public dissemination of printers' affiliation with or support of political candidates or organizations.

With regard to the recording provisions of Title II, the Court ruled that there was no Plantiff before it who had alleged that the Act would apply to him. That is, none of the depositers asserted that they were engaged in domestic transactions involving $10,000 or more, and therefore there was no Plaintiff present in the case who alleged that he was affected by the Act's reporting requirements. Therefore, the First Amendment challenges to Title II were specifically and expressly not considered by the Court.

It is significant to note that three of the nine Supreme Court Justices (Mr. Justice Brennan, Mr. Justice Marshall and Mr. Justice Douglas) dissented from the holding of the Court in the *California Bankers*, contending that the Act was unconstitutional, citing the same cases relied upon by the Appellees herein to demonstrate that the Bank Secrecy Act

was violative of rights to associational privacy. Moreover, two other Justices, Mr. Justice Powell and Mr. Justice Blackmun specially concurred in the disposition of the four judge plurality, due to the procedural posture of the case, but specifically warned that "a significant extension of the regulation's reporting requirements, however, would impose substantial and difficult constitutional questions for me. In their full reach, the reports apparently authorized by the open-ended language of the Act touch upon intimate areas of an individual's personal affairs. Financial transactions can reveal much about a person's activities, *associations* and beliefs. At some point, governmental intrusion upon these areas would implicate legitimate expectations of privacy." 94 S.Ct. at 1526 (emphasis added). The clear implication of Mr. Powell's special concurrence, joined by Mr. Justice Blackmun, strongly suggests that a requirement of public disclosure of political associations and fiancial transactions (such as is obviously required by Article 14.10(b)) as opposed to a mere reporting requirement, would probably be deemed constitutionally obnoxious by these two Justices also. The special concurrence, the dissents and the reaffirmation of the validity of the constitutional principles established by *NAACP* v. *Alabama*, *supra* and *Pollard* v. *Roberts*, *supra*, contained in the plurality opinion of the Court (see 94 S.Ct. at 1514) clearly indicate that Article 14.10(b) of the Texas Election Code cannot pass constitutional muster.

With regard to the earlier State cases discussed by Amicus Curiae (*Ex parte Hawthorne*, 116 Fla. 608, 156 So. 619 (1934); *State* v. *Freeman*, 143 Kan. 315, 55 P.2d 362 (1934); *State* v. *Babst*, 104 Ohio St. 168, 135 N.E. 525 (1922); *Commonwealth* v. *Acquaviva*, 187 Pa.Super. 550, 145 A.2d 407 (1958); to which list should be added *Saari* v. *Gleason*, 126 Minn. 378, 148 N.W. 293 (1914) and *Commonwealth* v. *Evans*, 156 Pa.Super. 321, 40 A.2d 137 (1945),[21]) it is readily aparent that each of these decisions pre-dates

[21] The Missouri Court was alone in correctly prophesizing the Talley result. See Ex parte Harrison, 212 Mo. 88, 110 S.W. 109 (1905).

Talley and *NAACP* v. *Alabama* by many years. Subsequent to *Talley* each of the State Courts which have considered a political advertising disclosure requirement has found such a provision to be constitutionally infirm. See *New York* v. *Duryea, supra;* Opinion of the Justices, Mass., June 29, 1972, 41 L.W. 2020; *People* v. *Mishkin,* 17 A.D.2d 243, 234 N.Y.S.2d 342 (1st Dept., 1962) aff'd. without opinion, 15 N.Y.2d 671, 255 N.Y.S.2d 881, 204 N.E.2d 209 (1964). Cf. *Ex parte Harrison, supra.*

Finally, the State of Texas urges its "doomsday" argument. If the Court is to hold that Article 14.10(b) is unconstitutional as violating First Amendment guarantees, the State asserts, "the Court will in effect throw out the statutes of two-thirds of the states of the Union as well as of the United States itself." Appellants' Brief at p. 12-13. That assertion is flatly incorrect. Only Alaska and California join Texas in requiring that the name and address of the printer appear on the campaign material. (Unlike Texas, violations in Alaska and California constitute only a misdemeanor offense.) Oregon and Vermont require that the political advertising include the name and address of the "publisher" but no case law in either of those states establishes whether the publisher means the printer or the person preparing or the person distributing the advertising. See discussion text, *infra.* A summary of each of the state laws cited by the Appellant is set forth in Appendix A to this Brief.

Thus, none of the interests conjured up by the Defendants possess the requisite urgency to justify derogation of the Plaintiffs' First Amendment rights to print anonymously and associate privately. Indeed, alternative means are available to achieve each of the interests asserted by the state without the widespread impairment of constitutional liberties inherent in Article 14.10(b). In sum, the requirements of Article 14.10(b) are dangerously incompatible with the dictates of our Bill of Rights. Accordingly, the Three-Judge Court's declaration that the statute is unconstitutional should be affirmed.

II.

ARTICLE 14.10(b) IS VOID FOR VAGUENESS, IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The theory underlying the constitutional concept of "vagueness" is based firmly in the logical proposition that no citizen should be compelled to risk criminal sanction without reasonable notice of the behavior proscribed by law. The law must not be a game of chance that tricks reasonable men, even unintentionally.

Two overpowering clarity gaps riddle Article 14.10(b) so completely that the District Court concluded that compliance with its mandates is "almost impossible."

(1) *Who is the "person paying for the advertising"?* This phrase could reasonably encompass any of a number of individuals. For example, it could refer to the advertising agency paying the candidate's bills; or it could contemplate identification of the campaign organization represented by the ad agency; or it could mean the person making a political donation earmarked for political advertising; or it could refer to the individual signing the check, or the messenger boy delivering it, or the candidate in whose behalf the payment is really made. Confusingly, each of the several interests asserted by the state in support of the statute suggest a different answer to this perplexing question. Thus, if the legislature was seeking to prevent fraud, slander, and other obnoxious campaign material, the name of the campaign committee, organization or association from whose coffers the money ultimately came might be the appropriate party to list as the person paying for the advertising. On the other hand, if the purpose of the statute is to inform the voters of the source of a particular candidate's support, the initial contributor would be the appropriate person to identify as the person paying for the advertising. If, on the other hand, the purpose of the statute is to help the voter evaluate cam-

paign material, the fact that the ad was designed by a particular advertising agency may be the disclosure contemplated by the statute. To the extent that the law is aimed at exposing the perpetrators of campaign dirty tricks, the individual within the campaign organization who was responsible for the particular ad would be the individual referred to by the statute (assuming that such individual was in any manner responsible for paying for the ad, which may not be the case in a large campaign using a voucher expense system). Finally, if Article 14.10(b) is meant to provide an opportunity to reply, the name of the candidate on whose behalf the ad was paid for would be the proper party to identify as "the person paying for the advertising."

Dramatically underscoring the vagueness of the statute, the Defendants in their Brief in the lower court insisted that the "person paying for the advertising" "would, a fortiori, be either the candidate, his campaign manager or assistant campaign manager, or the campaign manager of a political committee" (excluding the advertising agent or agency). Amicus Curiae supporting the Defendants, Common Cause, (which had drafted the legislation in the first place) disagreed in their Brief, insisting that "the person paying for the advertising" is the person "who has given the check that pays them" (i.e. the advertising agent, advertising agency or campaign donor). In its Application for Stay, the Petitioners suggested still another possible interpretation of the phrase:

> "It could be the person giving the money to the printers and publishers, the person, if paid by check, signing the check, the campaign manager of a campaign who under the Election Code is one of the persons entitled to authorize expenditures."

In the words of the Three-Judge District Court:

> "Article 14.10(b) which carries with it criminal penalties must be more explicit. The printers must not be left to a guessing game.
>
> The definition of 'persons paying for the advertising' should be left to the legislature for definition

> but as the statute now stands complying with it is *almost impossible* because it is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application . . . .' "

The honest printer who seeks only to comply with the law faces an intolerable guessing game in trying to identify "the person paying for the advertising". It is precisely this dilema which the vagueness doctrine condemns and the Constitution forbids. Clearly Article 14.10(b) does not even meet the tenuous vagueness standards of 1914 which merely required "a standard of conduct it was possible to know". *Collins* v. *Commonwealth*, 1914, 234 U.S. 634.

(2) *What is a "publisher"?* Black's Law Dictionary defines the verb "to publish" as "to make public; to circulate; to make known to people in general". This definition generally comports with lay dictionary definitions of that term. Webster's Seventh New Collegiate Dictionary, for example, defines "publish" as "to make generally known; to place before the public: disseminate." Thus, a person who circulates hands out, or distributes political advertising would appear to be a "publisher" of such material according to the dictionary. This interpretation would seem to most nearly effect the claimed purpose of the statute in facilitating the discovery of the source of particular offensive political material and would require printing the name of the distributor of political advertising. On the other hand, the manner in which the term "published political advertising" is used in the statute suggests that the words printer and publisher are synonymous. The legislature may have meant the term "publisher" to refer to the person who prints political advertising which appears in newspapers, magazines and journals, as opposed to leaflets, hand bills, billboards, t-shirts and the like which are printed by "printers" instead of "publishers".

A third definition of the term "publisher" is suggested by the realities of modern day political campaigns. For the most

part, political advertising is designed, coordinated, circulated and distributed under the direction of professional advertising agencies. Within the trade, it is the advertising agency which "publishes" the political advertising, because it is the advertising agency which produces the material and supervises its release.

Thus, at least three different kinds of persons involved in the dissemination of political advertising could be reasonably deemed to be the "publisher" thereof. The legislature could be referring to the person physically circulating the material, the person printing it in a magazine, newspaper or journal, or the person responsible for the preparation of the ad, the advertising agency. The precise meaning of the term "publisher" is not ascertainable and, accordingly, the statute fails to set forth its requirements with requisite specificity.

Thus, it is apparent why the Three-Judge found Article 14.10(b) so vague as to be "almost impossible" to comply with.

The statutory vagueness of Article 14.10(b) is all the more repugnant because the statute clearly operates in areas touching upon First Amendment rights. In this regard, the case of *U.S. Servicemen's Fund* v. *Eastland*, *supra*, is instructive. In that case the Federal Election Campaign Act had placed the media in the uncomfortable position of having to determine whether particular advertising was "on behalf of" or in denigration of any candidate for federal office. The problem (or more correctly, one of many problems) was that the statute offered no guidance for determining whether certain ads were "on behalf of" a particular candidate. In holding the law unconstitutional on vagueness grounds, the Court well stated the standard which controls the Texas law:

> "Having not only been placed in the unenviable position of enforcers of this statute, which is aimed at regulating politicians and not the media, but also faced with criminal sanctions for any questionable performance of this duty, the press is entitled to, and the constitution demands, proper guidance, free from ambiguity and vagueness."

Slip op. at p. 19. As enforcers of Texas policy, under threat of criminal sanction, the Appellees are similarly entitled to specific guidance, but Article 14.10(b) fatally fails to define its requirements with requisite specificity.

The Massachusetts Supreme Judicial Court recently reviewed and voided for unconstitutional vagueness proposed legislation in that state placing certain requirements on publishers of political advertisements. The Court stressed the need for precision in legislation regarding political advertising and ruled:

> "It would appear that the provisions above referred to would produce an unnecessarily chilling effect on the publication of any political advertising absent greater precision in definition and reasonable limitation of the phrases and provisions mentioned. To be avoided is the chilling effect of uncertain regulation on First Amendment rights."

Opinion of the Justices, Mass., June 29, 1972, 31 L.W. 2020.

The same admonition is apposite here. The dictates of Article 14.10(b), a statute undeniably regulating the exercise of First Amendment rights, are incapable of comprehension and fatally lacking in explicit direction. Men of common intelligence must be necessarily guess at its meaning and may reasonably differ as to its application. The statute is therefore void on its face, as the Three-Judge Court correctly concluded.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Appellees respectfully urge this Honorable Court to in all things affirm the judgment of the Three-Judge District Court pronouncing Article 14.10(b) of the Texas Election Code to be void on its face for its incompatibility with the mandates of the Constitution of the United States.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gerald M. Birnberg, as Counsel for Appellees herein, hereby certify that true and correct copies of the foregoing Appellees Brief have been served upon opposing counsel by placement in the United States mails, postage prepaid on this the ... day of March, 1975.

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APPENDIX A

Summary of Statutes

18 U.S.C § 612 (Supp. 1974). A person commits an offense if he publishes or distributes in interstate commerce any campaign material which does not contain the name of the person or organization responsible for the material. The penalty is a fine of not more than $1000 or imprisonment of not more than one year, or both.

ALA. CODE tit. 17, § 282 (1959). Campaign material must include the name of the person publishing or distributing it. A printer can violate by printing without the required disclosure. Misdemeanor, fine of not more than $500, imprisonment for not longer than 6 months.

ALASKA STAT. § 15.55.030 (Supp. 1973). The author, printer, and publisher of campaign material must be identified by name and address. Misdemeanor, fine of not more than $500, or imprisonment of not longer than 1 year.

ARK. STAT. ANN. § 3-1104 (i) (Supp. 1973). Campaign material cannot be published, printed, or distributed unless it identifies the sponsors or payers. Misdemeanor, fine of not more than $1000, or imprisonment for not longer than 1 year, or both.

CAL. ANN. ELEC. CODE § 12047 (Supp. 1961). Relating to campaign material designed to defeat a candidate, one who writes, prints, or distributes campaign material, violates the law unless the material contains the name and address of the printer and either the offices of the organization or the individual responsible therefore. Misdemeanor.

CAL. ANN. ELEC. CODE § 12047 (Supp. 1974). Relating to campaign material designed to defeat a measure on the ballot, such material must contain the name and address of either the officers of the organization or the individual responsible therefore.

COLO. REV. STAT. § 49-23-31 (1964). A person who publishes or distributes campaign material that does not contain the name of the person responsible for publication or distribution commits an offense. Fine of not more than $1000 nor less than $100.

GA. CODE ANN. § 34-1307.1 (1970). No person shall distribute or publish campaign material without the name and address of the person distributing or publishing. Misdemeanor, fine of not more than $1000, imprisonment of not more than 12 months, or both.

ILL. ANN. STAT. ch. 46, § 29-14 (Supp. 1974). A person who publishes or distributes campaign material which does not contain the name and address of the person causing such material to be published or distributed commits an offense. Misdemeanor, fine of not more than $1000, or imprisonment of less than 1 year.

IOWA CODE ANN. § 738.22 (1950). Whoever writes, prints, or distributes campaign material commits an offense, unless the material contains the name and address of the officers of the organization or the individual responsible for it. Misdemeanor, fine of not more than $100, or imprisonment of not more than 30 days, or both.

KAN. STAT. ANN. § 25-1714 (1973). Whoever writes, prints, or distributes campaign material commits an offense, unless the material contains the name of the officers or the organization or the individual responsible therefor. Imprisonment for not more than 6 months.

KY. REV. STAT. § 123.095 (1971). All material must include the name and address of the person paying for the material.

LA. REV. STAT. AN. § 18:1531 (West 1969). No person shall publish or distribute campaign material unless it contains the name and address of the person responsible for publication or distribution. Fine of not less than $1000 nor more than $10,000, or imprisonment of not less than 1 year nor more than 10 years, or both.

ME. REV. STAT. ANN. tit. 21, ch. 39, § 1575 (Supp. 1974). The source of campaign material must be identified by the name of the individual or the officers of the organization that sponsors it. Fine of not more than $500, or imprisonment of not more than 90 days.

MASS. ANN. LAWS, ch. 56, § 39 (Supp. 1974). No person shall publish in a newspaper or periodical any paid political advertisement unless it contains the name of the officers of the organization or the voter responsible therefor. Fine of not more than $1000 or imprisonment for not more than 1 year.

MD. ANN. CODE, art. 33, § 26-16(a)(7) (Supp. 1973). A person who publishes or distributes campaign material commits an offense unless the name and address of the person responsible therefore is included on the material.

MICH. COMP. LAWS ANN. § 168.914a (1967). No newspaper or periodical shall permit campaign advertisement unless it states the name and address of the person or organization paying for the advertisement.

MINN. STAT. ANN. § 211.08 (Supp. 1974). A person who publishes or distributes campaign material that does not include the name and address of the author, candidate or organization distributing or publishing the material is guilty of a misdemeanor.

MISS. CODE ANN. § 23-3-37 (1972). No person shall write, print, or distribute any campaign material unless the material is submitted to and approved by the candidate and such approval is printed on the material. Misdemeanor.

MO. ANN. STAT. § 129.300 (1966). It is unlawful for a person or organization to publish or distrbuite campaign material unless the material contains the name and address of the person or organization causing the publication or distribution. Misdemeanor, fine of not less than $100 nor more than $500, or imprisonment of not more than 6 months nor less than 30 days, or both.

MONT. REV. CODES ANN. § 94-1452 (1949). No newspaper or periodical shall include political advertisement unless it indicates the names and addresses or the officers of the organization or the individual responsible therefor. Misdemeanor.

NEB. REV. STAT. § 32-1153 (1974). No person shall print, publish, or distribute campaign material without including the name of the organization or individual who requested it, ordered it, or printed it. Misdemeanor.

N.H. REV. STAT. ANN. § 70:14 (Supp. 1973). All campaign material shall be signed by the person responsible for it. Misdemeanor for individuals, felony for others.

N.J. STAT. ANN. § 19:34-38-1 (1964). No person shall print, publish, distribute, or pay for any campaign material unless it bears the name and address of the person responsible for it, paying for it, or printing it.

N.D. CENT. CODE ANN. § 16-20-17.1 (Supp. 1973). All campaign material shall disclose the name and address of its sponsors and the person paying for it. Fine of not less than $100 nor more than $500, or imprisonment for not less than 30 days nor more than 6 months, or both.

OHIO REV. CODE ANN. § 3599.09 (1972). No person shall write, print, or ditribute campaign material unless it contains the name and address of the officers of the organization or the individual responsible for it. Fine of not less than $300 nor more than $2000.

OKLA. STAT. ANN. tit. 26, § 491 (Supp. 1973). Whoever writes, prints, or distributes campaign material, unless it includes the name and address of the officers of the organization or the individual who placed the order, shall be guilty of a misdemeanor. Fine not more than $500, or imprisonment of not more than 30 days, or both.

ORE. REV. STAT. § 260.522 (1973). No person shall print, publish, or distribute any campaign material unless it in-

cludes the name and address of the publisher. Misdemeanor, fine or not more than $1000, or imprisonment of not more than 1 year.

PENN. STAT. ANN. tit. 25, § 3546 (1963). Any person who writes, prints, or distributes any campaign material commits an offense, unless it includes the name of the officers of the organization or the registered voter responsible therefor. Fine of not more than $500, or imprisonment of not more than 6 months, or both.

R.I. GEN. LAWS, § 17-23-2 (1970). No person shall write, print, or distribute any campaign material unless it contains the name and address of the officers of the organization or voter responsible therefor. Misdemeanor, fine of not less than $100 or more than $500, or imprisonment of not more than 3 months.

TENN. CODE ANN. § 2-1920 (Supp. 1974). All campaign material shall be signed by the writer or officer of the organization responsible therefor. Misdemeanor, fine of not more than $1000, or imprisonment of not more than 1 year, or both.

UTAH CODE ANN. § 20-14-24 (1969). No newspaper or periodical shall include campaign material unless it states the name of the officers of the organization or voter responsible for paying for the advertisement.

VT. STAT. ANN. tit. 17, § 2022 (1968). A person who writes, prints, publishes, or distributes campaign material, unless it includes the name and address of the author and publisher, shall be fined not more than $500.

VA. CODE ANN. § 24.1-259 (1973). When a person pays for any campaign material to be printed, the printer must report the name and address of the payer to the board of elections. Misdemeanor, fine of not more than $500, or imprisonment of not more than 12 months or both.

W. VA. CODE ANN. § 3-8-12(a) (1971). No person shall publish or distribute any anonymous campaign material.

Misdemeanor, fine of not more than $1000, imprisonment of not more than 1 year, or both.

WIS. STAT. ANN. § 12.14(1) (West 1967). No newspaper or periodical shall publish campaign material unless it includes the name of the person authorizing it and paying for it. Fine of not less than $25 or more than $1000, imprisonment in the county jail for not less than 1 month or more than 1 year, imprisonment in the penitentiary for not less than 1 year or more than 3 years, or both.

WASH. REV. CODE ANN. § 29.85.270 (1965). All campaign material must identify the sponsor of it by name and address. Misdemeanor, fine of not more than $1000, or imprisonment of not more than 1 year, or both.